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In the Supreme Court of the United States

OCTOBER TERM, 1980

DONNA RIDGWAY AND PRUDENTIAL INSURANCE COMPANY OF AMERICA, PETITIONERS

v.

HAYLEY D. RIDGWAY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether federal law prohibits a state court from imposing a constructive trust on the proceeds of a Servicemen's Group Life Insurance policy for the benefit of the children of a deceased serviceman's first marriage, where the serviceman, in violation of the terms of a divorce decree requiring him to name the children as beneficiaries, designated his second wife as the policy beneficiary.

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INTEREST OF THE UNITED STATES

This case concerns the application of a federal statute, the Servicemen's Group Life Insurance Act of 1965 ("SGLI Act"), 38 U.S.C. 765 *et seq.*, and its implementing regulations to a state court's treatment of the proceeds of an SGLI policy. The SGLI Act authorizes the Administrator of the Veterans Administration to purchase from qualified commercial insurers group life insurance policies insuring the lives of members of the uniformed services. 38 U.S.C. 766. While designated companies such as petitioner Prudential Insurance Company, the current designee, are to administer the policies they issue and make the benefit payments under them, the Administrator has overall responsibility for the proper implementation of the SGLI Act and has promulgated regulations to that end. See *Shannon* v. *United States*, 417 F.2d 256, 259-261 (5th Cir. 1969). The Act and implementing regulations specify how beneficiaries are to be determined and protect payments to beneficiaries from attachment, levy, or seizure. The United States has an interest in assuring that state court decrees governing the disposition of payments to policy beneficiaries do not conflict with the express terms and underlying policies of the Act.

STATEMENT

Richard Ridgway, a Sergeant in the United States Army, was the insured under a $20,000 life insurance policy issued by petitioner Prudential Insurance Company pursuant to the Servicemen's Group Life Insurance Act of 1965, 38 U.S.C. 765 *et seq.* (Pet. App. 28). Sgt. Ridgway's first marriage ended in divorce in December 1977. The divorce decree, which was entered following property settlement negotiations with respondent April Ridgway, his first wife, ordered him "to keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children" and to replace the policies with other insurance should any of them "be terminated for any reason" (*ibid.*).

In 1978, Sgt. Ridgway married his second wife, petitioner Donna Ridgway. On April 3, 1978, contrary to the divorce decree, he changed the beneficiary designation of his SGLI policy, directing that the proceeds be paid as specified "by law." This meant that the statutory order of precedence in 38 U.S.C. 770(a) was to be followed; under that provision, the policy proceeds would be paid to Sgt. Ridgway's widow (Pet. App. 28).

Following Sgt. Ridgway's death in 1979, both April and Donna Ridgway filed claims with Prudential for the proceeds of the SGLI policy. April predicated her claim on the divorce decree and Donna claimed the proceeds on the basis of Sgt. Ridgway's policy designation and her status as his widow (Pet. App. 28). April Ridgway thereafter filed suit in state court against Prudential, on behalf of her children, seeking a preliminary injunction barring Prudential from paying the proceeds to Donna, a declaratory judgment that the proceeds belonged to her children, and the imposition of a constructive trust on the proceeds for the benefit of her children (*id.* at 28-29). Donna Ridgway was joined as a party to the suit (*id.* at 29).

The court rejected April Ridgway's claims, concluding (Pet. App. 30-32) that, under the terms of the SGLI Act, Sgt. Ridgway was not barred by the divorce decree from designating his second wife, Donna, as his beneficiary, and that imposing a constructive trust on the proceeds payable to Donna would impermissibly conflict with federal law, which gave Sgt. Ridgway the right freely to change his beneficiary and which required that the proceeds go to that beneficiary.

On appeal, the Supreme Judicial Court of Maine reversed (Pet. App. 16-25). It held that because Sgt. Ridgway had agreed to name the children as his beneficiaries and because he was obligated to maintain them as beneficiaries under a state court decree, the court should impose a

constructive trust on the insurance proceeds for the benefit of the children. The court concluded (*id.* at 21, 22-23) that this relief would not interfere with the federal policy of permitting an insured to change the beneficiary at any time because Sgt. Ridgway had voluntarily agreed to make an irrevocable beneficiary designation, and it further held (*id.* at 21) that the anti-attachment provision in 38 U.S.C. 770(g) did not bar the imposition of the trust because the provision applied only to the claims of creditors. The court acknowledged (Pet. App. 21-22) that this Court had held in *Wissner* v. *Wissner*, 338 U.S. 655 (1950), that the proceeds of a National Service Life Insurance policy, issued under a federal program similar to SGLI, could not be reached by a wife claiming under state community property law where the serviceman had designated his mother as beneficiary, but it distinguished that case as inapplicable where marital support obligations are concerned.

DISCUSSION

1. In 1979, approximately 3.1 million individuals were covered by insurance policies issued under the Servicemen's Group Life Insurance Act of 1965, 38 U.S.C. 765 *et seq.* See *1979 Veterans Administration Annual Report* 53 (July 1980). Insured service members live in all 50 states. Hence, the question whether the provisions of the SGLI Act and implementing regulations concerning designation of beneficiaries and attachment of policy proceeds are a bar, under the Supremacy Clause, to a state court's imposition of a constructive trust on such proceeds is an important and recurring one.[1] As we explain below, the answer given by the Maine Supreme Judicial Court is at odds with decisions of other state and federal courts, and it is likely to serve as

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[1]As petitioners note (Pet. 9-10) an Alabama state court is at present holding a similar case pending this Court's disposition of the petition in this case. *Nixon* v. *Prudential Insurance Co. of America*, No. CV-80-501-044 WCB (Ala. Cir. Ct., proceedings stayed Oct. 2, 1980).

an incentive for others in the position of April Ridgway to assert claims in derogation of the service member's choice of beneficiary. Absent guidance from this Court, the question is likely to continue to lack a uniform resolution. A definitive answer is needed by the company that now issues and administers these policies and others that might do so in the future,[2] by the VA, which oversees the program, by insured service members, who may otherwise be uncertain of the practical effect of their beneficiary designations, and by couples negotiating divorce settlements in which SGLI policies are involved.

2. In our view, the judgment of the Maine Supreme Judicial Court conflicts with federal law governing payment of the proceeds of SGLI policies and it should, accordingly, be reversed.

First, the express language of the SGLI Act plainly dictates that the policy proceeds be paid to Donna Ridgway, the statutory beneficiary, and that they not be diverted to someone else claiming them under state law. The statute provides that insurance benefits under an SGLI policy must be paid, "upon the establishment of a valid claim therefor, to the person or persons surviving at the date of [the service member's] death" in a specified "order of precedence." 38 U.S.C. 770(a). Benefits are to be paid first "to [such] beneficiary or beneficiaries as the member of former member

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[2]Although the Maine Supreme Judicial Court purported to reach the proceeds of the SGLI policy only after they had been received by the designated beneficiary (Pet. App. 21, 24-25), this precedent, if followed, can be expected to subject Prudential and other insurers to continued litigation. If a company pays the proceeds to the designated beneficiary and that person expends the funds before the person claiming under a divorce decree learns of the payment, the company might be sued for improper payment of the proceeds. See generally 5 *Couch on Insurance 2d* § 27:179 (1960). And if, as here, the person claiming under the decree learns of the impending payment before it is made, he would undoubtedly seek equitable relief against the company.

may have designated by a writing" received prior to the member's death at the appropriate office; if the service member has not made a written designation, the benefits are to be paid to the member's "widow or widower"; only if there are no beneficiaries under the first two categories are the benefits to be paid to the member's child or children. *Ibid.*

Moreover, proceeds payable to a beneficiary under 38 U.S.C. 770(a) are given express statutory protection from attachment under any type of judicial decree. Pursuant to 38 U.S.C. 770(g), payments of policy proceeds "shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure *by or under any legal or equitable process whatever*, either before *or after* receipt by the beneficiary" (emphasis added). Thus, under the statutory scheme, where the serviceman has not designated a beneficiary, Congress has made the choice of giving the proceeds to his children only if there is no surviving widow, and where the serviceman has designated a beneficiary pursuant to applicable regulations (or where a beneficiary is designated by operation of law), the payments to that beneficiary cannot be reached by other persons under legal or equitable process of any kind. In this case, therefore, because Sgt. Ridgway properly designated Donna as his beneficiary by directing that the insurance proceeds be paid as specified "by law," the court below erred in imposing a trust on the proceeds for the benefit of his children.

The VA has consistently construed the SGLI statute as mandating payment of policy proceeds to the beneficiary selected by the insured and properly registered under applicable procedures, notwithstanding any contrary terms of divorce settlements, decrees, or other documents. Thus, pursuant to his authority under 38 U.S.C. 201(c)(1) to "make all rules and regulations which are necessary or appropriate to carry out the laws administered by the Veterans' Administration and are consistent therewith." the

Administrator of Veterans' Affairs has promulgated regulations providing, *inter alia*, that a "member may designate any person, firm, corporation or legal entity (including the estate of the member), individually or as trustee, as beneficiary" (38 C.F.R. 9.16(a)), that "[a] change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary" (38 C.F.R. 9.16(e)), and that "[n]o change or cancellation of beneficiary * * * in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office" (38 C.F.R. 9.16(f)).

The Maine Supreme Judicial Court implicitly recognized that, given the terms of the SGLI Act and related regulations, it lacked power to substitute Sgt. Ridgway's children as the statutory beneficiaries because he had registered a different choice of beneficiary with the appropriate office. It sought to achieve the same result, however, by impressing a constructive trust on the insurance proceeds and making Donna Ridgway the constructive trustee. The court thereby violated the express terms of 38 U.S.C. 770(g), the anti-attachment provision of the Act. The court holding (Pet. App. 21) that Section 770(g) is inapplicable because the children of Sgt. Ridgway's first marriage are not "creditors" is clearly wrong in light of the legislative history of that provision.

The anti-attachment provision, which was added to the statute in 1970 (Pub. L. No. 91-291, Section 5, 84 Stat. 331), originated in a House amendment to S. 1479, 91st Cong., 2d Sess. (1970). 116 Cong. Rec. 14004 (1970). Representative Teague, the amendment's sponsor, and Senator Talmadge, the bill's sponsor, each spoke of the provision as exempting proceeds from "taxation and claims of creditors," but both also made clear that they regarded it as the equivalent of the

anti-attachment provision (38 U.S.C. 3101(a)) that protected policy proceeds under the National Service Life Insurance Act program ("NSLI"), 38 U.S.C. 701 *et seq.* 116 Cong. Rec. 14004, 18723 (1970). (The NSLI program differs from the SGLI program in that the federal government is the insurer rather than a policyholder purchasing policies on behalf of service members from commercial insurers.) The VA had always construed the anti-attachment provision of 38 U.S.C. 3101(a) and its forerunner as barring any claims against proceeds that would be inconsistent with the serviceman's designation of beneficiary, notwithstanding any contrary divorce decree or property settlement, and most decided cases followed that rule. See, *e.g.*, *Bonner* v. *United States*, 222 F. Supp. 539 (D. Mass. 1963); *Eldin* v. *United States*, 157 F. Supp. 34 (S.D. Ill. 1957); *Heifner* v. *Soderstrom*, 134 F. Supp. 174 (N.D. Iowa. 1955); Annot., 13 A.L.R. Fed. 6, 26 *et seq.* (1972 & 1980 Supp.) (collecting cases).[3] See also *Wissner* v. *Wissner*, 338 U.S. 655, 659 (1950) (construing the NSLI anti-attachment provision as barring serviceman's wife, claiming under community property law, from reaching policy proceeds to be paid to the designated beneficiary).[4]

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[3]The D.C. Circuit has suggested that the execution of a property settlement agreement might serve to block a subsequent change of NSLI beneficiary, but this statement was dictum, and the court acknowledged that the weight of authority was to the contrary. *Suydam* v. *United States*, 404 F. 2d 1329, 1331 (D.C. Cir. 1968).

[4]In *Wissner*, the Court acknowleged (338 U.S. at 660) that alimony and support claims posed a different question, but it declined to express any view on the question whether such claims could override the NSLI's anti-attachment provision. We note that in 42 U.S.C. (Supp. I) 659, Congress has permitted garnishment of federal benefits for alimony and child support obligations, notwithstanding the existence of anti-attachment provisions, but that waiver applies only to monies that are "payable by[] the United States or the District of Columbia" and for which "entitlement * * * is based upon remuneration for employment." Proceeds paid out by commercial insurers under the SGLI Act are thus unaffected by this provision.

The few reported cases involving the issue as it relates to SGLI policies also support petitioners' and the VA's position. In *Stratton* v. *Servicemen's Group Life Insurance Co.*, 422 F. Supp. 1119 (S.D. Iowa. 1976), and *Weymann* v. *Wilson*, 320 F. Supp. 980 (M.D. Fla. 1970), the district courts held that a former wife claiming policy proceeds under a divorce decree similar to the one involved here was not entitled to the proceeds, where the service member had cancelled the designation of the former wife as beneficiary and had thus directed distribution according to the statutory order of precedence. See generally *Prudential Insurance Co. of America* v. *King*, 453 F. 2d 925 (8th Cir. 1971) (field of servicemen's life insurance has been preempted by federal law).

Both *Stratton* (422 F. Supp. at 1122) and *Weymann* (320 F. Supp. at 989) suggest that persons claiming under divorce decrees that embody property settlement agreements might have viable suits against the estates of their former spouses for breach of contract. We take no position on that question, and the Court need not reach it in this case.[5] The court below did not have such a suit before it; rather, it impressed a trust on the very proceeds that Prudential was to pay Donna Ridgway pursuant to the express

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[5]Courts construing the statute under which NSLI policies are issued have divided on the question whether such breach of contract suits are consistent with that federal statutory scheme. Compare, *e.g.*, *McJunkin* v. *Estate of McJunkin*, 493 S.W. 2d 278 (Tex. Civ. App. 1973), with *Will of Hilton*, 88 Misc. 2d 760, 388 N.Y.S. 2d 985 (Surr. Ct. 1976).

We note that a suit against the estate of a service member would not necessarily involve a policy beneficiary even indirectly, since beneficiaries need not be heirs to the estate and since payments of SGLI policy proceeds are made directly to the designated beneficiary and not to the executor of a service member's estate. *Bader* v. *Administrator of Veterans Affairs*, 470 F. Supp. 1240, 1243 (D.N.J. 1979).

terms of the SGLI Act. Because this result conflicts with federal law, the judgment below is invalid under the Supremacy Clause.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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